

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14378 of 2004

Between:

Sri Gautamchand Jain, S/o. Late Sri G.C.Jain, 46 years,
R/o. 140, P.G. Road, Secunderabad.

...PETITIONER

AND

1. The Regional Provident Fund Commissioner, Barkatpura, Hyderabad.
2. The Recovery Officer, Office of the Regional Provident Fund Commissioner, Barkatpura, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ, Order or Direction in the nature of Mandamus or otherwise declaring the action of the Respondents in resorting to the provisions of Sec. 8(b) of the Act for recovery of P.F. arrears relating to M/s. Penguin Textiles Limited, Uppal Hyderabad by proceeding under Sec.8 (1)(B) for arrest of the Petitioner is wholly illegal, arbitrary and consequently forbear the respondent from taking any action under Sec. 8(B)(1) (b) of the Employees Provident Fund and Misc. Provisions Act, 1952.

Counsel for the Petitioner: MR.VILAS V.AFZULPURKAR

Counsel for the Respondents: MR.R.N.REDDY

The Court at the admission stage made the following:

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ORDER:

The petitioner is the director of M/s.Penguin textiles Ltd. As the petitioner was in arrears of Provident Fund, action was initiated under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ('the Act' for brevity). The Assistant Provident Fund Commissioner has passed orders under Section 7-A of the Act determining the amount and sent the certificate of recovery to the second respondent. It appears that the second respondent attached immovable property of the company and issued notice under Section 8-B of the Act, calling upon the petitioner to be present on 29.07.2004 to consider as to why the petitioner shall not be sent to prison. At that stage, the present Writ Petition is filed.

Sri Vilas V.Afzul Purkar, learned counsel for the petitioner submits that the petitioner is willing to pay the amount in instalments and that after receiving the notice on 30.06.2004, a representation was made to the second respondent on 29.07.2004. However, the same was not considered.

After perusing the representation, dated 29.07.2004 annexed to the Writ Petition, it becomes clear that the petitioner made a request for permission to liquidate the entire balance of the employee's provident fund, in ten (10) instalments at Rs.5,000/- (Rupees five thousand only) per month, commencing from September 2004, due to various reasons including financial stringency. Therefore, this Court is of considered opinion that the establishment, which is willing to pay the provident fund arrears may be given liberty to liquidate the provident fund arrears. However, I hasten to add that this is a matter to be considered by the Assistant Provident Fund Commissioner (not made a party). Therefore, the Writ Petition is disposed of directing the Regional Provident Fund Commissioner, Barkatpura, Hyderabad to consider the representation, dated 29.07.2004 made by the petitioner to the second respondent, within one week from the date of receipt of a copy of this order. If the petitioner is aggrieved by the same, it shall be open to the petitioner to avail appropriate remedy under the Act.

The Writ Petition, with the above observations, is disposed of.

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(V.V.S.RAO, J)

16th August 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Regional Provident Fund Commissioner, Barkatpura, Hyderabad.
2. The Recovery Officer, Office of the Regional Provident Fund Commissioner, Barkatpura, Hyderabad.
3. Two CD copies.